IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.46511 of 2005

Deo Nandan Yadav, Son of Late Baleshwar Yadav, resident of Village- Lodhipur Bigha, Police Station-Sheikhpura, District Sheikhpura ---------- Petitioner

Versus

1. **THE STATE OF BIHAR**
2. **Chandra Mauli Yadav, S/O Shiv Narayan Yadav, resident of Village- Lodhipur Bigha, Police Station-Sheikhpura, District-Sheikhpura. ---------- Opp.Parties**

For the petitioner : M/S Anjana Prakash , Sr. Advocate
Rakesh Kumar, Advocate.
For the State : Mr. Jharkhandi Upadhaya, A.P.P.
For Opp.Party no.2 : Mr. Basant Kumar Tripathy, Advocate.

WITH
Cr.Misc. No.7430 of 2006

1. Darogi Yadav ,Son of Bhikhari Yadav
2. **Bindeshwar Yadav, Son of Radho Yadav**
3. **Neero Yadav, son of Jhamman Yadav,**

All residents of Village- Lodipur , Police Station-Sheikhpura, District –Sheikhpura, Bihar ---------- Petitioners

Versus

1. **THE STATE OF BIHAR**
2. **Deo Nandan Yadav, Son of Late Baleshwar Yadav, resident of Village-Lodhipur Bigha, Police Station-Sheikhpura, District-Sheikhpura, Bihar -------- Opp.Parties**.

For the petitioners: Mr. Basant Kumar Tripathy, Advocate
For the State : Dr. Maya Nand Jha, A.P.P.
For Opp.Party no.2: Mr. Sanjeev Kumar, Advocate

WEB COPY NOT OFFICIAL

O R D E R

9 29-07-2008 Both these cases have been taken up together for hearing as they relate to same Sessions Trial Case No.581 of 2002 arising out of Sheikhpura P.S. Case No.73 of 2001 and having been heard together are being disposed of by this common order.

Deo Nandan Yadav, petitioner of Cr.Misc.No.46511 of

2005 is the informant of Sheikhpura P.S. Case No. 73 of 2001 and he has prayed for the quashing of the order dated 19.11.2005 passed by the learned Presiding Judge , Fast Track Court no.3, Sheikhpura, in Sessions Trial No.581 of 2002, whereby he has refused to summon Opp.Party no.2, Chandramauli Yadav, under Section 319 Cr.P.C. to face the trial along with other accused already being tried.

Darogi Yadav, Bindeshwar Yadav and Neero Yadav have questioned the bona fide of order dated 11.4.2001 passed in Sessions Trial No.581 of 2002 arising out of Sheikhpura P.S. Case No.73 of 2001 by the learned Presiding Judge, Fast Track Court no.3, Sheikhpura, whereby he has refused to summon Opp.Party no.2, Deo Nandan Yadav, the informant of said Sheikhpura P.S. Case under the provisions of Section 319 Cr.P.C. to face the trial along with others as additional accused.

WEB COPY NOT OFFICIAL

Sheikhpura P.S. Case No.73 of 2001 came to be registered on the basis of the fardbeyan given by Deo Nandan Yadav , petitioner of Cr.Misc.No.46511 of 2005 impleading several persons as accused and alleging therein that Chandramauli Yadav had opened fire on his son, Rabindra Kumar, but as his daughter, Rubi Kumari, came in the way , she was killed. The police after due investigation submitted a chargesheet in this case against the accused persons finding the occurrence to be true , but the allegation against Chandramauli Yadav having been found to be false, he was not sent up for trial. The trial appears to have proceeded against the chargesheeted accused and in course of trial P.W.3 Raj Kumar Yadav apart from reiterating

his statement under Section 161 Cr.P.C. stated before the court that it was Chandramauli who had fired causing the death of Rubi Kumari. Similar evidence followed from P.W.4 Ram Sharan Yadav, P.W.5 Deoki Yadav and informant Deo Nandan Yadav. In view of the evidence that had come in course of the trial, the prosecution-State filed a petition to summon Chandramauli under Section 319 Cr.P.C. to face the trial as an additional accused which was rejected by the impugned order dated 19.11.2005. The learned trial court appears to have noticed that there were two versions of the same occurrence and on the basis of the two counter versions/ cases have been started and in the instant case , Rubi Kumari, daughter of informant Deo Nandan Yadav had been killed at the hands of the accused whereas in other case, namely, Sheikhpura P.S. Case No.74 of 2001 , it is alleged that the informant of Sheikhpura P.S. Case No.73 of 2001, Deo Nandan Yadav, had allegedly fired at Krishnadeo Prasad having sustained fire-arm injury on his buttock and it was his fire which had killed Rubi.

WEB COPY NOT OFFICIAL

So far as Cr.Misc.No.7430 of 2006 is concerned, it is prosecution witnesses, Darogi Yadav, Arjun Yadav , Bindeshwar Yadava and Neero Yadav who had filed a petition to summon Deo Nandan Yadav , informant of this case, who based their grounds on the allegation of Deo Nandan Yadav having killed his own daughter. This petition was also rejected by the trial court vide order dated 19.11.2005.

It appears that the learned trial Judge has somehow mixed up the facts of the two cases and in doing so has rejected both the

petitions filed for summoning Chandramauli Yadav as an additional accused and the other for summoning Deo Nandan Yadav as an additional accused.

In that view of the matter, the impugned orders in both the cases are set aside and the trial court is directed to re-hear the petitions aforesaid afresh and dispose of the same in accordance with law, keeping in mind the fact that since both the petitions were in respect of Sheikhpura P.S. Case No.73 of 2001, he should restrict his consideration and findings only to the materials available in the record of Sessions Trial No.581 of 2002 arising out of Sheikhpura P.S. Case No.73 of 2001 without in any way or manner referring to the counter case being Sheikhpura P.S. Case No.74 of 2001, of which learned trial court does not appear to in seisin .

In the result, applications are allowed and the learned trial Judge is directed to act in accordance with the direction made above.

(Abhijit Sinha, J)

NKS/-

WEB COPY NOT OFFICIAL